

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

M.L. HAWK REALTY, LLC, et al.,
Plaintiffs,

v.

TOWN OF NORTH KINGSTOWN, et al.,
Defendants.

C. A. No. 17-491-JJM-LDA

ORDER

Rickey L. Thompson has moved to intervene in this civil action against the Town of North Kingstown and its Town Council. Mr. Thompson resides within 200 feet of property owned by the Plaintiffs that was the subject of planning and zoning action in the Town. The Plaintiffs had purchased five adjoining parcels of real estate that they refer to as The Preserve at Rolling Green. After years of Town regulatory proceedings concerning this property, the Town Council in August 2017 voted to amend the Compact Village Development Ordinance ("CVD") as to this property. The amended CVD limited the overall percentage of nonresidential to residential coverage to no more than five percent with a limit of 10,000 square feet maximum of total commercial building space. The Plaintiffs challenge this amendment in this lawsuit.

Mr. Thompson seeks to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2). Rule 24(a)(2) allows intervention as of right if an applicant meets four conditions:

- (1) The application must be timely . . . ;
- (2) The applicant must claim an interest relating to the property or transaction which is the subject of the action;
- (3) Disposition of the action may, as a practical matter,

impair or impede that applicant's ability to protect the interest; and
(4) The applicant must show that the interest will not be adequately represented by existing parties.

Conservation Law Found. of New Eng., Inc. v. Mosbacher, 966 F.2d 39, 41 (1st Cir. 1992). An "applicant who fails to meet any one of these requirements cannot intervene." *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 637 (1st Cir. 1989).

Plaintiffs, in objecting to Mr. Thompson's motion to intervene, concede that he meets the first two requirements, but assert that he does not meet the last two. This Court agrees. Any determination by this Court in this lawsuit will not "impair or impede [Mr. Thompson's] ability to protect [his] interest." Mr. Thompson will still have the unfettered ability to raise his concerns and protect his rights before the Planning Commission when the Plaintiffs, after a decision by this Court, seek preliminary plan approval. Furthermore, Mr. Thompson has not shown his interests "will not be adequately represented" by the Defendant Town Council and its officials. Mr. Thompson's interest in the limited issue that is before this Court at this time will be adequately represented by the Town Defendants.

Therefore, the Court DENIES Rickey L. Thompson's Motion to Intervene (ECF No. 8).

IT IS SO ORDERED.



John J. McConnell, Jr.
United States District Judge

December 11, 2017